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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,560	05/15/2001	Hans Berger	66376-252-7	8137

25269 7590 04/10/2008
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EXAMINER

BUCHANAN, CHRISTOPHER R

ART UNIT	PAPER NUMBER
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3627

MAIL DATE	DELIVERY MODE
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04/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/854,560
Filing Date: May 15, 2001
Appellant(s): BERGER ET AL.

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 14, 2008 appealing from the Office action mailed September 27, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: appellant states in the appeal brief that claims 5-18 are rejected as being unpatentable over Lobiondo et al. in view of

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Namisniak et al. and Sano et al., however, in the final rejection claims 5-18 are rejected as being unpatentable over Lobiondo et al. in view of Namisniak et al. and further in view of Sano et al.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,305,199	LOBIONDO et al.	8-1994
5,711,160	NAMISNIAK et al.	1-1998
5,415,840	SANO et al.	5-1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lobiondo et al (US 5,305,199) in view of Namisniak et al (US 5,711,160).

Regarding claims 1 and 31, Lobiondo discloses a method for automation of the management of operating materials and/or supplies of an analyzer or analyzing system for determining a parameter or a parameter group of a sample (when to reorder toner, paper, etc. for printing machines), being used in medical, environmental or food technology (printer or copier could be used in various settings), said operating materials being tagged as to types (toner, paper, etc.) and said required supplies being tagged as to types (toner, paper, etc.) and quantities (how many paper reams or toner cases, see Figs. 3 and 4), comprising:

(b) entering a desired frequency of analysis or automatic calculation of an estimated frequency of analysis from past frequencies of use of said analyzer or analyzing system (periodic or each decrement, col. 4 line 17-19, projected usage, Fig. 3),

(c) automatically calculating an amount of said operating materials and/or supplies required per unit of time (col. 3 line 67+, col. 4 line 1-4),

(d) determining an optimum point in time for ordering more of said required operating materials and/or supplies, taking into account the usage of materials/supplies and quantities of said required supplies (col. 4 lines 4-9, 39-49),

(e) automatically ordering of said operating materials and/or supplies via a device for remote data transmission (col. 4 lines 17-28).

Lobiondo does not explicitly disclose (a) detecting and recording of maximum useful lives and expiry dates of materials/supplies.

Namisniak discloses a system that includes detecting and recording of maximum useful lives and expiry dates of materials/supplies (i.e., storage lifetime and days left for perishable food items, see Fig. 6, col. 6 lines 10-58).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the means for detecting and recording of maximum useful lives and expiry dates of materials/supplies, as taught by Namismiak, into the method of Lobiondo because it would provide a warning when an item is approaching or has reached the end of its useful lifetime.

Regarding claims 2-4, Lobiondo discloses a method wherein said operating materials and/or supplies are ordered via an internet connection and wherein said unit for remote data transmission is used to provide an internet portal for information on products, software, service, maintenance, and use, in the fields of medical and food technology (col. 3, lines 16-31).

Claims 5-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lobiondo et al (US 5,305,199) in view of Namisniak et al (US 5,711,160) and further in view of Sano et al (US 5,415,840).

Lobiondo et al. further teach updating information on product using software, expected delivery and shipment information that can be transmitted via a link (col. 3 lines 20-24 and 42-46).

Neither Lobiondo nor Namisniak teaches an analyzing system for determining medical sample parameters.

Sano et al teach a system for determining medical samples wherein said connection for remote data transmission is provided in a computer central unit of said analyzing system (fig. 1), the analyzer is coupled to the central unit as claimed and can be removed to be inserted in a different position (col. 4, lines 42-48), said analyzing system is capable of being provided with a sample bus to exchange the samples to be tested between the analyzer and the control unit (col. 4 lines 1-13).

Neither Lobiondo nor Namisniak nor Sano expressly teaches exchanging washing, calibrating and quality control media between analyzer and the control unit, but this feature is obvious in the medical field because the system as taught by Sano et al intrinsically would have to do at least some washing, calibrating and quality control media in order to have any kind of exchange between these two elements and also to ensure the reliability of the equipment in use to perform a certain test.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the automatic analyzer, as taught by Sano, into the combined systems of Lobiondo and Namisniak because it would enable measurement to be performed with simple mechanisms and good reproducibility.

(10) Response to Argument

Appellant's arguments have been fully considered but they are not persuasive. Appellant argues that the prior art references do not disclose all the recited features of the claimed invention. In particular that Lobiondo does not disclose recording maximum useful life or expiry dates for materials/supplies and that Namisniak does not disclose automatically detecting and recording the types and maximum useful live of materials/supplies.

The examiner disagrees and stands by the rejection. As the rejection above states, Lobiondo does not explicitly disclose detecting and recording of maximum useful lives and expiry dates of materials/supplies. This feature is disclosed by Namisniak. Namisniak discloses a system that includes detecting and recording of maximum useful lives and expiry dates of materials/supplies (i.e., storage lifetime and days left for perishable food items). The material type (ham, pizza, fruit, etc., Fig. 2) is recorded into the tracking system. The automatic feature is disclosed by Lobiondo, however, making a feature manual or automatic is well-known and it would be a matter of design choice to make a feature manual or automatic.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Christopher R Buchanan/

Examiner, Art Unit 3627

Conferees:

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627

Vincent Millin /VM/

Appeals Practice Specialist